IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 4.2.2005

CORAM:

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

WRIT PETITION No.2630 OF 1997.

V.Rajarathinamani ... Petitioner

Vs.

1.The Presiding Officer
Labour Court
Vellore
North Arcot
Ambedkar District.

2.The Management of
Shandlow India Ltd
rep. by its Managing Director
SIPCOT
Hosur-635 126
Dharmapuri District ... Respondents

* * *

Writ Petition filed under Article 226 of the Constitution of India praying for issue of a writ of certiorarified mandamus as stated therein.

* * *

For petitioner : Mr.S.Ayyadurai
For respondents: Mr.N.Balasubramanian
for R.2

* * *

O R D E R

The above writ petition has been filed praying to call for the records from the first respondent relating to the Award in I.D.No.247 of 1994 dated 29/12/1995 and to quash the same and to direct the second respondent to reinstate the petitioner in service with continuity of service, backwages and attendant benefits.

2. The case of the petitioner is that he joined the services of the second respondent on 30/4/1985 on condition

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that he would be employed as a trainee for three years; that the alleged training period was completed on 30/4/1988 and by a letter dated 25.4.1988, he was terminated from service; that at the request of the petitioner, on 1.6.1988, the Management re-employed the petitioner in service and again terminated his services; that when the petitioner approached the Management for reinstatement, the Management did not reinstate him and hence, he raised a dispute before the Labour Officer, Krishnagiri; that the Conciliation Officer sent his failure report, whereupon the petitioner had raised an Industrial Dispute under Section 2 A (2) of the Industrial Disputes Act in I.D.No.247 of 1994 before the first respondent and since the same was dismissed, he has come forward to file the above writ petition praying for the relief extracted supra.

3. During arguments, the learned counsel for the petitioner besides reiterating the grounds of writ petition, would submit that the findings of the first respondent in the impugned Award are contrary to the facts and circumstances of the case.

4. The learned counsel would then refer to Clause 14 of The Tamil Nadu Industrial Employees (Standing orders) Rules, 1947, which reads as follows:

"14.Termination of employment of workmen:

(1) Subject to the provisions contained in standing order 17, no employer shall dispense with the service of any workman with not less than one year of continuous service except for a reasonable cause and without giving such workman at least one month's notice or wages in lieu of such notice.

(2) In cases of retrenchment as defined in Section 2(oo) of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the provisions of the said Act shall apply:

Provided that no such notice shall be necessary in the case of *badli* and apprentices.

(3) No order of termination of service of a workman shall be made unless the workman is informed in writing of the reasons for the termination of his services and is given an opportunity to show cause against such termination. A copy of the said order shall be communicated to the workman.

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(4) Where the employment of any workman is terminated by or on behalf of the industrial establishment, the wages earned by him shall be paid before the expiry of the second working day from the day on which his employment was terminated or the same shall be made available to him by the drawer of the wages, in case he does not turn up for receiving the wages."

5. Pointing out Clause 14 of the above said Rules, the learned counsel for the petitioner would submit that it is clear that for any apprenticeship, training is for only a year and therefore, the action of the second respondent in employing the petitioner as an apprentice for three years is clearly an act of unfair labour practice.

6. The learned counsel for the petitioner would further submit that the apprenticeship was ended on 1/5/1988 and therefore, there was no question of extension of training, since extension means continuation from the date of completion, but the service of the petitioner was terminated with effects from 1/5/1988 and fresh employment was offered only with effects from 1/6/1988 and therefore, the request for extension of training is a clear lie and untenable.

7. The learned counsel would further submit that as per the Standing Order 14 (1), the second respondent has not given any reason for the termination of service and also the management has not given any opportunity to show cause against such termination.

8. In support of his arguments, the learned counsel for the petitioner would cite a judgment of the Honourable Apex Court delivered in KARNATAKA STATE ROAD TRANSPORT CORPORATION, BANGALORE Vs. SHEIKH ABDUL KHADER & Ors. ETC 1983 (1) LLJ - 110, wherein it is held as follows:-

"Once the conclusion is reached that retrenchment as defined in S.2(oo) of the Disputes Act covers every case of termination of service except those which have been embodied in the definition, discharge from employment or termination of service of a probationer would also amount to retrenchment. Admittedly, the requirements of S.25F of the Disputes Act had not been complied with in these cases. Counsel for the appellant did not very appropriately dispute before us that the necessary consequence of non-compliance of S.25F

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of the Disputes Act in case where it applied made the order of termination void. The High Court, in our opinion, has, therefore, rightly come to the conclusion that in these cases the order of retrenchment was bad and consequently it upheld the Award of the Labour Court which set aside those orders and gave appropriate relief."

9. The learned counsel for the petitioner would also cite yet another judgment of the Honourable Apex Court delivered in V.P.AHUJA Vs. STATE OF PUNJAB AND OTHERS reported in AIR 2000 SUPREME COURT - 1080 wherein it has been held:

"A probationer, like a temporary servant, is also entitled to certain protection and his services cannot be terminated arbitrarily, nor can those services be terminated in a punitive manner without complying with the principles of natural justice."

By citing the above said judgments, the learned counsel for the petitioner prays this Court to allow the above writ petition.

10. On the contrary, the learned counsel for the second respondent besides reiterating the contents of the counter filed before the Labour Court, would cite the following judgments.

1. MANAGEMENT OF TI DIAMOND CHAIN LTD., MADRAS Vs. PRESIDING OFFICER, SECOND ADDITIONAL LABOUR COURT, MADRAS AND ANOTHER (2003 1 LLJ - 198)
2. U.P.STATE ELECTRICITY BOARD Vs. SHIV MOHAN SINGH AND ANOTHER. (2005 1 LLJ - 117)
3. M.VENUGOPAL Vs. L.I.C. OF INDIA, A.P. & ANR. (1994-I-LLJ-597)
4. OSWAL PRESSURE DIE CASTING INDUSTRY, FARIDABAD Vs. PRESIDING OFFICER & ANOTHER. (1998-I-LLJ 1074)

11. So far as the first judgment cited on the part of the learned counsel for the second respondent Management is concerned, citing a case of the Honourable Apex Court in KALYANI SHARP INDIA LTD. vs. LABOUR COURT No.1, GWALIOR AND ANOTHER reported in 2001-I-LLJ 1346 wherein it is held:

"The order of employment itself clearly sets out

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> the terms thereafter which makes clear that the facility of providing training to him could be put to an end at any time without assigning any reason whatsoever and his services could be regularised only on satisfactory completion of his training. If these clauses are read together it is clear that he was under probation during the relevant time and if his services are not satisfactory, the same could be put an end to ..."

and following the above judgment, to suit the facts of the case in hand, a learned single Judge of this Court would hold, in a case of non-extension of training period, that 'such a non-extension does not violate the provisions of Section 2(oo)(bb) of the Industrial Disputes Act'.

12. In the second judgment cited above reported in 2005-I-LLJ 117, dissecting the Apprentices Act, 1961 in a case wherein the respondent was appointed as Apprentice Trainee and on completion of training for three years was relieved as per terms of appointment as an apprentice and in such circumstances, the Honourable Apex Court has held that 'he could not be declared to be a worker (workman) and could not claim the benefit of Section 25-F of the Industrial Disputes Act.'

13. In the third judgment cited above reported in 1994-I-LLJ 597, the petitioner/a Development Officer of the LIC was terminated from service and when he challenged the said order of termination, a single Judge of the High Court took the view that the Development Officer was a 'workman' within the meaning of the Industrial Disputes Act and termination of his service will amount to retrenchment and inasmuch as the provisions of Section 25-F of the said Act were not complied with, the termination order was null and void. On an appeal filed on behalf of the Corporation, a Division Bench of the High Court took the view that because of clause (bb), which has been introduced in Section 2(oo) of the Act with effects from August 18, 1984, by the Industrial Disputes (Amendment) Act, 1984, the termination of the appellant by the Corporation within the period of probation shall not amount to retrenchment within the meaning of Section 2(oo). In such circumstances, the Honourable Apex Court has observed that 'Section 2(oo) of the Act says that "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action.'

14. In the last judgment cited above, reported in

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1998-I-LLJ 1074, according to the appointment order, the individual was appointed for a period of four months on probation and if he continued in the service, this period would be automatically increased for four months and this period would further be increased for three months if the Management does not give him, in writing, a letter of his confirmation and during his period or at the end, his services could be terminated without assigning any reason or giving any notice. In this case, the Honourable Apex Court has held:

> "It was not the case of the respondent that the action of the employer was mala fide. The Labour Court had also not held that the satisfaction of the Management was vitiated by mala fide. It had struck down the order of termination on the ground that it was stigmatic and, therefore, it could not have been passed without holding a domestic inquiry. The High Court rightly did not accept that finding. What the High Court failed to appreciate was that it was not open to it to sit in appeal over the assessment made by the employer of the performance of the employee. Once it was found that the assessment made by the employer was supported by some material and was not mala fide, it was not proper for the High Court to interfere and substitute its satisfaction...."

On such grounds, the learned counsel for the second respondent would pray to dismiss the above writ petition.

15. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for the petitioner and the second respondent Management, what comes to be known is that the petitioner, stating that he was a permanent employee of the second respondent Management, seeks to quash the Award passed by the first respondent Labour Court dated 29.12.1995 made in I.D.No.247 of 1994 further directing the second respondent to reinstate him in service with continuity of service and backwages and attendant benefits.

16. The firm case of the petitioner is that on completion of his training period for three years, on 30.4.1988, he was employed in Management from 1.6.1988 on a raised salary from Rs.400/= to Rs.500/= with deductions towards Provident Fund and Family Welfare Fund and from among 120 workmen, since the petitioner and yet another have not been confirmed, they demanded confirmation but on the contrary, the Management terminated their services

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without any reason or enquiry and all his requests for the reinstatement proved futile and hence he approached the Labour Officer and on failure of conciliation based on the report of the Labour Officer, Krishnagiri, he initiated the Industrial Dispute under Section 2A(2) of the Industrial Disputes Act and the Labour Court, having arrived at the conclusion justifying the termination, the petitioner has come forward to file the above writ petition seeking the relief extracted supra.

17. On the contrary, the second respondent/management would take a stand that the petitioner is not a 'workman' within the meaning of Section 2(s) of the Industrial Disputes Act; that though Section 2(s) includes an Apprentice who is employed by the Management but does not include an Apprentice who is taken as a Learner; that the petitioner remained a 'learner' and not a 'workman' and that there was no relationship of Master and Servant; that the petitioner entered into a contract of labour with the second respondent Management and since there is no contract of service, there is no question of termination; that the period of learning was three years which is likely to be terminated or extended depending upon the performance of the trainees; that the training of the petitioner was extended from 1.5.1988 for a further period of 18 months and since there was no improvement, his training was terminated on 31.8.1989; that there is no question of any victimisation.

18. The Labour Court below, would conduct an enquiry in which the petitioner examined himself as W.W.1 and on behalf of the Management they would examine their Manager as M.W.1 for oral evidence and for documentary evidence, the petitioner would mark 4 documents as Exs.W.1 to W.4 and on the part of the Management, it would mark nine documents as Exs.M.1 to M.9 for documentary evidence. Thereafter, the Labour Court, having framed its own point for consideration and having appreciated the evidence placed on record would record its findings during the course of which it would admit that the petitioner is a certificate holder from the ITI as it could be seen from Ex.M.1 application.

19. The Labour Court then taking into consideration Ex.W.1, the order of appointment of training, would find the tenure to be three years with a stipend and it could be extended or shortened by the Management with no guarantee for employment but would consider for any suitable job subject to the availability of vacancy.

20. It is the case of the Management that the

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performance of the petitioner during the training period, since being not satisfactory, it was extended under Ex.M.2 for a further period of 18 months from 1.6.1988. On the contrary, it would be argued on the part of the petitioner that from 1.6.198, he was appointed as a permanent employee and not again as a trainee.

21. The Labour Court, in appreciation of the evidence, would observe that neither the performance nor the attendance of the petitioner was satisfactory as could be seen from Exs.M.7 and M.8; that performancewise, he was reported 'poor'; that for this, no mala fide is attributed to the officers of the Management and therefore it cannot be said that the Management has victimised the petitioner for his Union activities.

22. But, in the above circumstances, the Labour Court, would initially find that the training of the petitioner was further extended under Ex.M.2 for a period of 18 months from 1.6.1988. But, at a later stage, the Labour Court would found that the Management terminated the said training as per Ex.W.1 since it provides for termination, forgetting the fact that just for the simple reason that if the agreement provides for anything, it cannot simply be exercised in an arbitrary or high-handed manner but only if and when it is warranted and therefore since the Rules provide for, the same has been exercised. It is an untenable finding recorded on the part of the Labour Court below. From the Award of the Labour Court it could be seen that when the Labour Court started assessing the merits of the case, as it could be seen in Para No.6, it writes that 'the petitioner would make it appear as if he was a regular workman' as though the petitioner has no right to take such a stand and to substantiate the same, thus the Labour Court even prior to entering into the discussion of the merit of the case has arrived at the pre-drawn conclusion, which could alone be presumed from the manner in which the Labour Court has opened its mind in the appreciation of the facts and circumstances of the case.

23. Moreover, the Management is not in a position to specify as to what is the reason for terminating the extended training period of 18 months in the middle and with no proper reason assigned on the part of the Management, all of a sudden to arrive at such a hasty conclusion, the termination could only be attributed as a tainted one. Whether the petitioner was either working in his capacity as the permanent employee or as a trainee secondly, by accepting such clauses introduced into the agreement providing for termination of the employees or

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trainees without assigning any reason as it could be seen under Ex.W.1, it would only mean that the Labour Court has encouraged such high-handed powers to be wielded by the Management following unfair labour practice and therefore citing such arbitrarily introduced clause into the contract in exercise of undue influence, making use of the plight of the trainees or employees cannot be accepted as a justifiable ground for putting down the rights of the employees.

24. Further more, since most of the documents submitted on the part of the Management being those which could be made at their will and wish, any permanent employee could be converted into a trainee even without their knowledge and when he protests unreasonable and illegal acts perpetrated on the part of the Management, the Management would make use of such documents as against the employee and therefore while appreciating those documents, the Labour Tribunals are expected to be cautious and careful enough to dissect the same.

25. Again coming to the basic question 'whether on 1.6.1988, the Management employed the petitioner in service and did not reinstate him for no reason assigned or no enquiry held or whether the petitioner was undergoing the training for the extended period for non-satisfactory completion of training during the three year term since the petitioner was permitted to complete his training, at least for the extended full term', on materials placed on record and upon studying the pleadings of parties, one could easily understand that the Labour Judge would reject the case of the petitioner merely stating that it is stipulated in the order of appointment that during training, the performance of the trainees is unsatisfactory, it could be further extended at the will and pleasure of the Management and as such since the petitioner was found to be inadequate during the training period, on the part of the Management, they would come forward to say that his training period was extended by 18 months.

26. So far as this part of the pleadings and arguments are concerned, on the part of the Management, they would put forth Ex.W.2 Memo. before the Labour court to show to the effect that the performance of the petitioner was 'poor' as a trainee and not satisfactory, the training was extended under Ex.M.2 order for a further period of 18 months from 1.6.1988 and that the petitioner should reach the target level of training and his continuation depends upon his progress with better attendance. In confirmation of this argument, that even in attendance, the petitioner

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was poor, Exs.M.7 and M.9 Muster Rolls would be placed on record before the Labour Judge and he would see that the attendance was not up to the mark.

27. But, on the part of the petitioner, he would state that since he started involved himself in the Labour Union activities, he was victimised by the Management, in spite of being a permanent workman. It would be argued on the part of the petitioner that document in Ex.M.2 was prepared and introduced by the Management for the purpose of the case; that even according to the Management, the apprenticeship ended on 1.5.1988 and therefore there was no question of extension of training since extension means continuation from the date of completion of the original tenure, but in this case, he was terminated with effects from 1.10.1988 and employment was offered only with effects from 1.6.1988 and therefore, the contention of the Management that he requested for training is a clear lie and an untenable argument. Likewise, the document introduced under Ex.M.2 to the effect of ordering training for further 18 months from 1.6.1988 is also a make-believe, manipulated and not a reliable document.

28. As we have already entertained doubts regarding those documents which could be introduced by the Management since the Registers and facilities for correction of such documents are well within their ambit, the chances for manipulating the same or creating them anew for the purpose of the case cannot be ruled out. The Labour Court has not focussed its attention in this angle but since, as already pointed out, at the outset, even prior to entering into the discussion, the Labour Court has started maligning the case of the petitioner, which could only be viewed that the Labour Court has not appreciated the case of the petitioner with an open mind but has become prejudicial having come to the pre-drawn conclusions and therefore since the appreciation of the vital documents need redressal by the same authority, this Court is of the view that it is a fit case that should be remanded to the Labour Court itself for re-appraisal of all those facts and circumstances and the evidence placed on record and with further opportunity for parties to be heard and in full appreciation of those documents and materials placed on record particularly the vital documents such as Exs.W2, M2 and M7 to M9 and hence it is only desirable to order directing the Labour Court to pass orders on merits and in accordance with law and hence the following order:

In result,

(i) the above Writ Petition succeeds and the

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same is allowed.

(ii) The Award dated 29.12.1995 made in I.D.No.247 of 1994 by the Labour Court, Vellore is set aside.

(iii) The subject matter is remanded to the Labour Court, Vellore for re-enquiry to be held in addition to what has been placed on record already with further opportunity for parties to be heard and for a fair Award to be passed on merits and in accordance with law.

(iv) Yet another direction need to be given to the Labour Court, Vellore, in view of the long pending nature of the case, to expedite the procedure and pass orders, in the manner aforementioned, at any cost not later than six months from the date of receipt of a copy of this order and the same is ordered accordingly.

However, in the circumstances of the case, there shall be no order as to costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

Mvs/Rao

To

The Presiding Officer,
Labour Court,
Vellore.

+1cc to Mr.S.Ayyathurai, Advocate Sr 2630

+1cc to Mr.N.Balasubramanian, Advocate Sr 4801

KSJ (CO)
km/10.2.

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